IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

WP(C).No. 22792 of 2004(L)

PETITIONER:

CHAMAPARAMB;ATH MOOSA, S/O.MOIDEEN,
TRADER, PALAYAD AMSOM, PATHIYARAKKARA DESOM,
VADAKARA TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

RESPONDENTS:
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1. KUYYANDATHIL KANNAN, S/O.CHOYI,
KUYYANDATHIL HOUSE, PUDUPPANAM AMSOM,
DESOM, P.O. PUDUPPANAM, VADAKARA TALUK,
KOZHIKODE DISTRICT.

2. KILACHAPARAMBATH AMMAD,
PUDUPPANAM AMSOM, DESOM,
P.O. PUDUPPANAM, VADAKARA TALUK,
KOZHIKODE DISTRICT.

BY ADV. SRI.C.VALSALAN
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V
SRI.ZUBAIR PULIKKOOL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.C NO.22792/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE AFFIDAVIT IN SUPPORT OF IA.72/03 DT.19.12.02.

EXT.P2:- COPY OF THE COUNTER STATEMENT FILED BY WRIT PETITIONER & ANOTHER IN THE ABOVE IA.

EXT.P3:- COPY OF THE AFFIDAVIT IN SUPPORT OF PETITION IA.678/02 IN AS.NO.73 99, SUB COURT VADAKARA.

EXT.P4:- COPY OF THE COUNTER STATEMENT FILED BY WRIT PETITIONER & ANOTHER IN THE ABOVE IA.

EXT.P5:- COPY OF THE JUDGMENT IN OS.N O.99/98 OF MUNSIFF'S COURT, VADAKARA, DT.26.2.99.

EXT.P6:- COPY OF THE ORDER IANOS.678/02 AND 72/03 IN AS.73/99, BY ADDL.DIST. & SESSIONS JUDGE, VADAKARA DT.30.6.04.

EXT.P7:- COPY OF THE C.A. NO.105/04 IN AS.73/99 ADDL.DT.COURT, VADAKARA WITH ENDORSEMENT OF RETURN THERON DT.13.7.04.

/TRUE COPY/

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K.P.BALACHANDRAN, J.

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W.P.(C)NO.22792 OF 2004

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Dated this the 15th day of February 2007

JUDGMENT

Petitioner is the second respondent in I.A.678/2002 and I.A.72/2003 in A.S.73/1999 on the file of the Additional District Court, Vadakara. It is submitted that I.A.678/2002 was an application under Order XLI, Rule 27 Civil Procedure Code seeking leave to have additional evidence admitted in the appeal and I.A.72/2003 is a petition for leave to amend the plaint. The grievance of the petitioner is that by Ext.P6 common order passed on I.A.678/2002 and I.A.72/2003 in A.S.73/1999 the Additional District Judge, Vadakara has remanded the matter to the court below setting aside the judgment under appeal but that he is unable to challenge the remand order as the appeal is not disposed of though however the fact remains that the appeal is no longer on the file of the Additional District Court, Vadakara, the same having been allowed and remanded. Ext.P6 common order

on I.A.678/2002 and I.A.72/2003 as also the endorsement of Ext.P7 copy application speaks eloquently that A.S.73/1999 has been allowed by the Additional District Judge, Vadakara but that there is no judgment in the appeal.

2. I have heard the arguments of counsel on both sides. The grievance of the petitioner is that in view of the manner in which the appeal has been remanded he is unable to assail the remand order. The counsel for the 2nd respondent also supports the stand taken by the petitioner. The counsel for the first respondent is unable to support the impugned order remanding the appeal by Ext.P6 order which is a common order on I.A.678/2002 and I.A.72/2003.

3. In the circumstances, I set aside Ext.P6 order and restore A.S.73/1999 to the file of the Additional District, Court, Vadakara and restore I.A.678/2002 and I.A.72/2003. The Additional District Judge shall dispose of the matter afresh according to law. It is made clear that Ext.P6 order is set aside for the sole purpose of enabling the court below to

pass appropriate orders on the two I.As. and if he feels that the remand is necessary in view of the orders on I.As.673/02 and 72/2003 to pass separate order of remand in the appeal.

This writ petition is disposed of as sated above.

K.P.BALACHANDRAN, JUDGE

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